

## Additions and Deletions Report for AIA® Document A141™ – 2014

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### PAGE 1

AGREEMENT made as of the twenty-third day of November in the year two thousand fifteen (2015).

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,  
335 Four Mile Rd | PO Box 260005  
Conway, SC 29528  
District Office Phone 843.488.6700

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

New Carolina Forest Middle School  
(per Owner's Request for Proposals No. 1415-91)

Note: references to Owner's Request for Proposals No. 1415-91 include its addenda.

### PAGE 2

~~C~~ SUSTAINABLE PROJECTS

...

Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015.

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Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-9 selected by the Horry County Board of Education on November 2, 2015.

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Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015.

...

Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91 selected by the Horry County Board of Education on November 2, 2015..

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Number not used.

...

Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015.

§ 1.1.7 The Owner's design and construction milestone dates:

~~.1 — Design phase milestone dates:~~

~~.2 — Submission of Design-Builder Proposal:~~

~~.3 — Phased completion dates:~~

~~.4 — Substantial Completion date:~~

~~.5 — Other milestone dates:~~

Per "Design Requirements" published for Solicitation No. 1415-91

...

(List name, legal status, address and other information.)

...

SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601.

...

Per Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91.

...

Per Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91.

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Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3) including all post-occupancy requirements published in the solicitation as amended by addenda.

...

(List name, address and other information.)

Executive Director of Facilities (or a designee identified in writing by the owner.)

Horry County Schools

Facilities Department, 1160 E Highway 50

Conway, SC 29526

843.488.6965

...

Owner may utilize third party project management which will also receive submittals.

...

To be determined by Owner. If retained, such consultants will be identified promptly..

...

Robbie Ferris, S.C. AR.6106

FIRSTFLOOR ENERGY POSITIVE LLC,

333 Fayetteville St., Suite 225, Raleigh, NC 27601

919-573-6350

...

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 14.4

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

jurisdiction, nonjury before a circuit judge in Horry County, SC.

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**§ 1.4.7 Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

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The Design-Builder may invoice the owner for \$1,118,043. for its design work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below:

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

**§ 2.1 number not used**

**Individual or Position**

**Rate**

**§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out of town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of \_\_\_\_\_ percent (\_\_\_\_%) of the expenses incurred.

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid (\_\_\_\_) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

*(Insert rate of monthly or annual interest agreed upon.)*

\_\_\_\_% The Owner will not pay interest on unpaid sums. This is a specific waiver of requirements of S.C. Code Ann. §§ 29-6-30 and 29-6-50.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

**Building Permit and Other Permits and Fees:** No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work. For each day (not counting Saturdays and Sundays, and not counting the day the Design-Builder submits its completed application to the authority) beyond five (5) days that a jurisdictional authority takes to respond to a permit application or similar permit request that is on the project's critical path, the Design-Builder may claim one (1) additional day for the achievement of Substantial Completion.

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§ 3.1.4 The Design-Builder shall be responsible to the Owner for ~~acts, errors, and omissions of the~~ Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

...

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

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The Office of School Facilities (OSF) in conjunction with the State Fire Marshal shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. ~~On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, As stated in the Design Requirements, the~~ Design-Builder shall submit written progress reports ~~to the Owner, reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing~~ estimated percentages of completion and other information identified below:

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~~.12 Additional information as agreed to by the Owner and Design-Builder, designated by the Owner through its project management software data requirements.~~

§ 3.1.8.2 In addition, ~~where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:~~

~~.1 Design-Builder's work force report;~~

~~.2 Equipment utilization report; and~~

~~.3 Cost summary, comparing actual costs to updated cost estimates, addition to the requirements of § 3.1.8.1, the Design-Builder shall provide similar information through in-person progress report presentations to the Horry County Board of Education each month during one of the Board's public meetings.~~

...

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

...

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

[Numbers §4.2 & §4.3 intentionally not used]

~~§ 4.1.2 The Design Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.~~

~~§ 4.2 Evaluation of the Owner's Criteria~~

~~§ 4.2.1 The Design Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.~~

~~§ 4.2.2 After the Design Builder meets with the Owner and presents the preliminary evaluation, the Design Builder shall provide a written report to the Owner, summarizing the Design Builder's evaluation of the Owner's Criteria. The report shall also include~~

- ~~.1 allocations of program functions, detailing each function and their square foot areas;~~
- ~~.2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;~~
- ~~.3 a preliminary schedule, which shall include proposed design milestones, dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design Builder's Proposal; and dates of periodic design review sessions with the Owner; and~~
- ~~.4 the following:  
(List additional information, if any, to be included in the Design Builder's written report.)~~

~~§ 4.2.3 The Owner shall review the Design Builder's written report and, if acceptable, provide the Design Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design Builder execute a Modification.~~

~~§ 4.3 Preliminary Design~~

~~§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:~~

- ~~.1 Confirmation of the allocations of program functions;~~
- ~~.2 Site plan;~~
- ~~.3 Building plans, sections and elevations;~~
- ~~.4 Structural system;~~
- ~~.5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and~~
- ~~.6 Outline specifications or sufficient drawing notes describing construction materials.~~

~~The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.~~

~~§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design Builder with written consent to proceed to development of the Design Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design Builder execute a Modification.~~

~~§ 4.4 Design-Builder's Proposal~~

~~§ 4.4 Design-Builder's Construction Proposal~~

~~§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's The Design-Builder's Construction Proposal shall include the following:~~

- ~~.1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;~~
  - ~~.2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum; method;~~
  - ~~.3 The proposed date the Design-Builder shall achieve Substantial Completion; Completion ;~~
- ...
- ~~.6 The date on which the Design-Builder's Construction Proposal expires.~~

~~§ 4.4.2 Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.~~

...

~~§ 5.1.2.1 The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.~~

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Maintenance of Record Drawings: The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

Professional Certifications: When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

Contractor's Quality Control Program: The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksite Superintendent(s).

1. Compliance with Employment Laws: By entering into a Contract Agreement, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:
- A. Title VII of the Civil Rights Act of 1964, as may be amended.
  - B. Age Discrimination in Employment Act of 1964, as may be amended.
  - C. Title I of the Americans Disabilities Act of 1990, as may be amended.
  - D. Equal Pay Act of 1963, as may be amended.

- E. Fair Labor Standards Act, as may be amended.
- F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
- G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

**Employment Taxes and Benefits:** Unless under order from the Internal Revenue Service or South Carolina state government, the District does not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

**Project Key Staff – Project Manager:** The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager or the duties and status of the Project Manager during the course of the project without approval of the District.

**Project Key Staff -- Worksite Superintendent(s):** The Contractor shall employ at least one (1) full-time, competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

**Worksite Communications:** The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

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§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

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§ 5.7.2 If the Design-Builder ~~changes~~ desires to change any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the



proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. ~~If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.~~

...

~~The~~ In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

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§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner ~~incurs that are payable to a separate contractor and other contractor(s), respectively, incur~~ because of the Design-Builder's delays, improperly timed activities ~~or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

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- ~~1. Additional costs of professional services; Change Order Allowable Pricing: For any change in contract price, the Contractor shall provide, itemize, and justify with appropriate supporting data, direct costs attributable to the change. Direct costs attributable to the change in work shall be limited to the following:~~
  - A. Costs of materials, equipment and processes to be incorporated into the work including costs of shipping, handling, fabricating, sales tax (8% required in Horry County and 9% within certain incorporated parts of the City of Myrtle Beach as of August 1, 2009), or other such costs inherent in the provision and delivery of such materials, equipment and processes by the supplier or manufacturer.
  - B. Costs of direct labor based on actual hourly labor rates multiplied by the actual work hours required to accomplish the change in work when such change in work results in additional contract time or labor. No Contractor or subcontractor shall ask for direct labor costs, when work required can be accomplished with the existing work force, in conjunction with other concurrent work, and during the current approved contract time. The hourly labor rate for any additional contract time or laborers shall be actual hourly rates not to exceed thirty dollars (\$30) per hour unless documented proof of payment of a higher hourly rate for a specific skilled laborer is approved by the District prior to Change Order execution.
- ~~2. Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; C. Costs of fringe benefits for additional direct labor, including social security, unemployment or other taxes, health and workers' compensation insurances, or other benefits required by agreement, custom or applicable laws. Such fringe benefit rate shall not exceed twenty-eight percent (28%) and the District has the right to request itemized documentation proving the fringe benefit rate used.~~
- D. Costs of machinery or equipment rented or leased in the short term specifically for completion of the additional work to be performed. Such equipment rented/leased shall not customarily be owned by

the Contractor or any subcontractor affected by the change but shall be necessary to the accomplishment of the work required. Copies of invoices for such rental shall be provided to document the cost of rental or lease of machinery or equipment. The District shall not pay for use of Contractor- or subcontractor-owned equipment or machinery, which costs are included in the overhead computation.

- ~~3~~ ~~Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~ E. Costs of permits or inspection fees directly attributable to the change in work and not included as part of the Contractor's requirements nor attributable to the Contractor's nonperformance or non-conformance to the Contract Agreement.

F. Other such direct costs directly attributable to the work and approved by the District.

G. Any additional cost resulting from an amendment to performance and payment bonds but in no event more than one percent (1%) after application of overhead and profit provided for elsewhere. The Contractor shall be responsible for notifying the Surety of any changes in the contract price, if required by the Surety.

Costs itemized shall not exceed the unit costs as listed in the most current issue of Means Construction Cost Data or actual costs justified to the satisfaction of the District.

Unallowable Costs: Any costs which may be perceived by the Contractor to be indirectly attributable to a change in work shall not be included in direct costs but shall be considered part of the overhead and profit rate applied to direct costs. Such costs not to be included in direct costs shall be, by way of illustration and not limitation:

- ~~4~~ ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;~~ A. Labor hours and fringe benefit costs of the worksite superintendent(s) when such costs were included, or should have been included, in the original bid submitted or result from the Contractor's inability to meet the approved schedule or required completion date. The Contractor must prove, to the satisfaction of the District, such additional costs are directly attributable to any extension of time beyond the last approved completion date. An increase in contract price for additional site supervision shall be at the District's sole discretion.

B. Perceived additional costs attributable to the Project Manager or supervision and coordination of subcontractors, suppliers or Contractor employees.

C. Costs related to use, rental, purchase or replacement of equipment generally or customarily necessary to accomplish the work but not to be incorporated into the work such as, by way of illustration and not limitation, hand tools, generators, cleaning equipment, scaffolding, signage, fencing, vehicles, fuel, and so forth.

D. Transportation or travel costs related to the transporting of hired or contracted supervisors, workers or subcontractors to and from the worksite or between worksites or to pick-up and deliver materials, equipment and processes to the worksite by the Contractor's or subcontractor's own forces including parking, tolls, fines, meals, per diem, hotel, living expenses, or other such costs.

- ~~5~~ ~~Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~ E. Costs attributable to expediting delivery of materials, equipment or processes including telephone calls, facsimile transmissions, copying, employee labor and benefits, and so forth.

F. Costs attributable to maintaining a local office, home office or corporate office as well as office staffing, equipment and consumables, and so forth.

G. Costs for maintaining on-site facilities, including work trailers, telephones, computers, licenses, temporal'/ utilities, and so forth.

H. Contracted services such as accountants, payroll service providers, attorneys, catering and so forth.

I. Catering or vending services, portable toilets, dumpsters, and so forth.

J. Other such indirect costs of doing business or costs normally considered inclusive in overhead.

Allowable Overhead and Profit Charges: Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.

B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.

C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

~~6~~ Additional costs of supervision and field office personnel directly attributable to the change. **Retainage:** The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the Agreement and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the Agreement and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.

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§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builders schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, ~~give notice of or enforce mechanic's~~ lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. ~~give notices of project~~ commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

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§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building land development, zoning, and other permits, licenses and inspections.

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§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. ~~Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.~~ Proposal.

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§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner ~~or its designee~~ shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

...

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the

Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

#### § 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to comingling of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or delay in purchase of any project property or owner provided surveying and testing of such property); or by an act of god, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damages completed work, stored material, or impedes progress of the work; by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

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§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions. . Such time extension request shall be in writing and submitted to the District with its Application for Payment. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 Anticipated Weather Delays: A total of two (2) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. If adverse weather days beyond the two (2) days anticipated are substantiated by written (NOAA) data indicating precipitation greater than .10" occurred that day an extension of time will be allowed to the extent of one (1) full day of extended time for each full working day of adverse weather conditions. . If the precipitation over .10" is so great that it causes subsequent work days to be lost those days may also be requested as a time extension and will be granted day for day basis for days lost in construction operations. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

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§ 9.3.1 At least ~~ten~~ TWENTY ONE days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

...  
The Owner shall, ~~within seven days after receipt of the Design-Builder's Application for Payment, SEE § A.1.5.1.3 FOR SCHEDULE.~~ In accordance with the schedule set forth in § A.1.5.1.3, the Owner issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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.7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

...  
§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. ~~If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.~~ Contractor.

...  
§ 9.6.7 ~~Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.~~

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§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner ~~submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.~~

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall ~~make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection review the Work.. If the Owner's review~~ discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another ~~inspection by the Owner to determine Substantial Completion.~~ review of the Work by the Owner.

...

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will ~~prepare for the Owner's signature~~ obtain for the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly ~~inspect~~ review the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build ~~Documents~~ Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

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§ 11.2.1 ~~Before or After Substantial Completion.~~ The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

...

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within ~~one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents,~~ the three-year duration of the Design-Builder's post-occupancy obligations, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During ~~the one-year~~ this period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 ~~The one-year~~ This year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 ~~The one-year~~ This period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

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§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the ~~one-year~~ two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

...

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service ~~solely and exclusively~~ for purposes of constructing, using, maintaining, altering and adding to the Project, ~~provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents-Project.~~ The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service ~~solely and exclusively~~ for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

1.2.3.1 PROTOTYPE. The Owner shall have the right to use the Instruments of Service as a "prototype" design under South Carolina Board of Architectural Examiners regulations and policies. Any architect receiving the original plans from the Owner must first acknowledge and accept full responsibility for the adequacy of the design for its new project, as well as absolve the original Architect of any responsibility of any kind as relates to the original design. Should the Owner provide the Documents and/or Specifications to the Architect(s) for other Projects, then the original Architect, if not retained for the other project(s), shall be relieved of any liabilities arising out of the other Project(s) and the Owner will indemnify and hold harmless the original Architect from any Claims arising out of such other Project(s).

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason ~~other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause,~~ to obtain a limited, irrevocable and non-exclusive license ~~solely and exclusively~~ for purposes of constructing, using, maintaining, altering and adding to the Project, ~~provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service, subject to South Carolina regulations and policies concerning successor design professionals...~~

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. ~~The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the~~

extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

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§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due termination and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

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§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, profit on that executed Work, and costs incurred by reason of such termination, and damages-termination.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract. Contract and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

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§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed-termination.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2-law.

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§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

- 2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work-Work and otherwise available under this Agreement.



~~§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

...

~~§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

...

~~§ 14.4 Arbitration~~

~~§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.~~

~~§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~§ 14.4.4 Consolidation or Joinder~~

~~§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 14.4.4.3 The Owner and Design Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design Builder under this Agreement.~~

...  
The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4 located.

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Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

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#### Conduct of the Design-Builder's Principals, Employees, Agents and Representatives

The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Design Builder shall be responsible for ensuring compliance by the Design Builder and any employees, agents or representatives, or subcontractors of the Design-Builder, including all Design Consultants, to the following:

- A. No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.
- B. No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.
- C. No improper attire, actions or gestures while on any District property.  
No smoking on District property in conformance to Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.
- D. Secure SLED (State Law Enforcement Division) criminal background checks on all the Design-Builder's Principals, employees, agents, and representatives, and subcontractors, performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives, or subcontractors, of the and Design Builder having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the Design Builder and made available to appropriate District personnel or the District's legal counsel immediately upon request.

#### Promotional Materials

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

### Drug-Free Workplace

The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

### Right to Audit Project

The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

**Traffic Control On-Site and Off-Site:** The Design-Builder shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Design-Builder shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

**Safety Designee:** The Design-Builder shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals.

**Licenses and Permits:** During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

**Iran Divestment Act:** The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11- 57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-irandivestment.phtml>(.) Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List

**Immigrant Workers:** The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

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SC IMMIGRATION LAW. S.C. Code § 8-14-40 Compliance: Design-Builder certifies that the Design-Builder will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this that chapter by the contractor and any subcontractor or sub-subcontractor.

Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

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- ~~.4~~ AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed
- ~~.5~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following: Owner's Request for Proposals No. 1415-91 (with addenda) and Design-Builder's Proposal to the same as accepted by the Horry County Board of Education.
- ~~.6~~ Other:
- ~~.5~~ Post-Occupancy Requirements stated in Owner's Request for Proposals No. 1415-91.

...

Joe Defeo, Chair of the Board of Education

Robert Ferris, Authorized Member

## ***Certification of Document's Authenticity***

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:02:17 on 11/22/2015 under Order No. 0239586208\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)



**AIA®**

# Document A141™ – 2014 Exhibit B

## Insurance and Bonds

for the following PROJECT:  
(Name and location or address)

New Carolina Forest Middle School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

THE OWNER:  
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

THE DESIGN-BUILDER:  
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).  
(In words, indicate day, month and year.)

### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

### ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(1715753780)

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the  
(Paragraphs deleted)  
Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

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The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### § B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### ARTICLE B.3 OWNER'S INSURANCE

#### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

*(Paragraph deleted)*

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

*(Paragraph deleted)*

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

*(Paragraphs deleted)*

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

Init.



cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

*(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

*(Paragraphs deleted)*

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## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:09:04 on 11/21/2015.

### PAGE 1

New Carolina Forest Middle School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,  
335 Four Mile Rd.  
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, ~~unless a different duration is stated below:~~  
(~~If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.~~)

#### Agreement

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

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User Notes:

(1715753780)

PAPR - 001225

- ...  
...  
3 damages because of injury to or destruction of tangible ~~property; property, and must contain the~~  
subcontractor exception to the "your work" exclusion;  
...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...  
\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ ) per claim and (\$ ) in the aggregate.~~

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability and Pollution and Automobile Liability~~. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability, and Pollution and Automobile Liability~~. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The  
performance bond, may, but is not required to secure the  
professional liability of design professionals to the extent  
such liability is covered by the design professional's 100% of contract value.

professional liability insurance.

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

~~§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.~~

~~§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

~~§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.~~

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

~~§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ B.3.2.7 Waivers of Subrogation. The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

#### ARTICLE B.4 — SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Sunday, November 22, 2015 1:30 PM  
**To:** Robbie Ferris  
**Subject:** Re: CORRECTED E: RF revisions to checked draft 11\_20\_2015

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

How about 3. I will need to make and print the 5 sets then drive to Conway

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 22, 2015, at 1:28 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith  
These look great...  
I am presenting at 4:00, would you like to meet before that to sign contracts. We could meet at 2:30 or 3:00 if you like...  
Robbie

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Sunday, November 22, 2015 12:17 PM  
**To:** Robbie Ferris  
**Subject:** RE: CORRECTED E: RF revisions to checked draft 11\_20\_2015

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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permission to examine, copy or distribute the accompanying material. If you receive this message in error, please notify us by telephone as listed above immediately.

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Saturday, November 21, 2015 7:10 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas ([athomas@metconus.com](mailto:athomas@metconus.com)); Michael Richter  
**Subject:** RE: CORRECTED E: RF revisions to checked draft 11\_20\_2015

Keith,

When you make these changes I need to send the final to the bonding company for their approval. Here are my comments.

I just happened to find one item A.3.1.6 and A.3.1.7 that I thought were had agreed upon that was changed. If there are other substantial things that you changed please let me know where they are.

Main Document

- The weather delays and anticipated weather language I sent you this morning or something like that needs to be included. Most of our subs plan on working Saturday and or Sunday to get the work done. To not allow rain days if they fall on the weekend would be to defeat the purpose. Also we are told getting a rain day out of HCS with their current language takes a supreme court judge, seriously! We don't want to have to hire a scheduling expert and a lawyer every time it rains. The language needs to be simple, if it rains more than 2 days per month we get the extra days. As I see it we are saving HCS a lot of embarrassment by making this concession. They unnecessarily delayed the procurement process not us. I would rather not recount the delays because it would be unproductive at this point. We are taking risk here. What if we have a dry year? Regardless of the time extensions they should know we will do everything in our power to finish these jobs when they need them. We would not be able to withstand the political pressure of kids not have a school to attend even if we contractually had the time.

Exhibit A

- A.1.5.1.3-exhibit f that you sent us from HCS says if we submit application for payment by the 25<sup>th</sup> we get paid by the 15<sup>th</sup> of the following month. The last blank is (30) days according to exhibit F
- A.2.2 May 1<sup>st</sup> goes here I think
- A.3.1.6- We need something like this, again, we don't need to argue about if our proposal complies with the conceptual design or any other project requirement. They accepted our proposal. -----  
*The design builders proposal clarifies the design builders assumptions and clarifications.*
- A.3.1.7- *The design builders proposal has been determined by the owner to be an acceptable interpretation of the RFP and the project requirements.*

---

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Saturday, November 21, 2015 4:14 PM  
**To:** Robbie Ferris  
**Subject:** CORRECTED E: RF revisions to checked draft 11\_20\_2015  
**Importance:** High

Forget prior. Here they are. Remote computer not as simple as being there.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Keith R. Powell  
**Sent:** Saturday, November 21, 2015 4:13 PM  
**To:** 'Robbie Ferris'  
**Subject:** RE: RF revisions to checked draft 11\_20\_2015

How are these? Will make changes for MB and SMS issues.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Saturday, November 21, 2015 1:17 PM  
**To:** Keith R. Powell  
**Subject:** Fwd: RF revisions to checked draft 11\_20\_2015

Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

**From:** Aaron Thomas <[athomas@metconus.com](mailto:athomas@metconus.com)>  
**Date:** November 21, 2015 at 1:15:16 PM EST  
**To:** "Robert W. Ferris" <[rferris@sfla.biz](mailto:rferris@sfla.biz)>  
**Subject:** FW: RF revisions to checked draft 11\_20\_2015

Robbie- I just read this again and realized we had made a mistake that could cause confusion. The attached revision made 2 minor changes to what we sent last night:

1. On weather delays I deleted the reference to the 10 year NOAA average being a baseline we would compare to. I did this because if we are already using 2 days per month as the baseline for adverse weather all we need NOAA for is to substantiate the days over 2 so it is not subjective in nature with the staff. Example If we have 5 days of rain in December 2015 that is over .10" then we would turn in the NOAA report for the project locale showing we had the 5



days over .10 and we would get an extension via change order for 3. <(5) days over .10" – (2) days expected in contract = (3) days extension>

2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

**Aaron Thomas, MCM, LEED-AP | President**  
**Metcon, Inc.** | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372  
office 910.521.8013 | mobile 910.734.0537 | email: [athomas@metconus.com](mailto:athomas@metconus.com)  
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Sunday, November 22, 2015 3:49 PM  
**To:** Robbie Ferris  
**Subject:** Re: CORRECTED E: RF revisions to checked draft 11\_20\_2015

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

The board has to vote first at its meeting Monday night - he knows to not leave without signing

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 22, 2015, at 1:44 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Sounds good, will you contact the board chair to meet us, he could meet us at 3:30, that will give me a few minutes to double check all the allowances and contract amounts...

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Sunday, November 22, 2015 1:30 PM  
**To:** Robbie Ferris  
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- A.1.5.1.3-exhibit f that you sent us from HC5 says if we submit application for payment by the 25<sup>th</sup> we get paid by the 15<sup>th</sup> of the following month. The last blank is (30) days according to exhibit F
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Call me if you have any questions. I'm at the office.

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President  
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke,  
NC 28372  
office 910.521.8013 | mobile 910.734.0537  
| email: [athomas@metconus.com](mailto:athomas@metconus.com)  
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)

## Sheri L. Wainscott

---

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**Sent:** Sunday, November 22, 2015 3:56 PM  
**To:** Robbie Ferris  
**Cc:** William F. Halligan  
**Subject:** Re: Horry County Schools-contracts  
**Attachments:** image002.png

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

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Fax: 919.573.6355  
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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

**Sheri L. Wainscott**

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Sure I would appreciate that because of all the variety

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On Nov 22, 2015, at 4:02 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Ok , if possible, lets still meet at 3 so I can double check all amounts...

---

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The board has to vote first at its meeting Monday night - he knows to not leave without signing

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Sounds good, will you contact the board chair to meet us, he could meet us at 3:30, that will give me a few minutes to double check all the allowances and contract amounts...

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## Sheri L. Wainscott

---

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**To:** Robbie Ferris  
**Cc:** William F. Halligan  
**Subject:** Re: Horry County Schools-contracts

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And On the payment bond it is to ensure that designers get paid so the district does not have to worry about that. VWR have seen this as an issue with civil engineering services around post occupancy storm water systems covenants to DHEC, for example. SC law allows design professionals payment bond protection so I want the payment bond to mirror the statute and not have HCS drawn into a disputed engineer payment - legally or politically.

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Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 12:25 PM  
**To:** John Gardner; Mark Wolfe  
**Subject:** FW: HCS - Revised Invoices  
**Attachments:** Invoice\_#1\_Carolina Forest\_2.docx; Invoice\_#1\_Mrytle Beach MS\_2.docx; Invoice\_#1\_Socastee ES\_2.docx; Invoice\_#1\_Socastee MS\_2.docx; Invoice\_#1\_St. James\_2.docx; Wire Instructions for FFEP LLC\_HCS\_Team\_11172015.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

While we're there today can you give Robbie the info he will need to submit invoices?

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

---

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325

Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

**Firstfloor Energy Positive LLC**

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

**INVOICE**

INVOICE #1  
DATE: MARCH 21, 2017

**TO:**

Horry County Schools  
335 Four Mile Rd  
Conway, SC 29528

**FOR:**

Carolina Forest Middle School

DESCRIPTION			AMOUNT
Design work performed before the execution of the design build amendment			\$1,118,043.00
TOTAL			\$1,118,043.00

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

**Thank you for your business!**

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

INVOICE #1  
DATE: MARCH 21, 2017

**FOR:**  
Myrtle Beach Middle School

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

PAPR - 001252

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

INVOICE #1  
DATE: MARCH 21, 2017

**TO:**  
Horry County Schools  
335 Four Mile Rd  
Conway, SC 29528

**FOR:**  
Socastee Elementary School

DESCRIPTION			AMOUNT
Design work performed before the execution of the design build amendment			\$1,055,481.00
TOTAL			\$1,055,481.00

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

**Thank you for your business!**

PAPR - 001253

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

INVOICE #1  
DATE: MARCH 21, 2017

**TO:**  
Horry County Schools  
335 Four Mile Rd  
Conway, SC 29528

**FOR:**  
Socastee Middle School

DESCRIPTION			AMOUNT
Design work performed before the execution of the design build amendment			\$1,043,697.00
TOTAL			\$1,043,697.00

**Thank you for your business!**

PAPR - 001254

**Firstfloor Energy Positive LLC**

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

**INVOICE**

INVOICE #1  
DATE: MARCH 21, 2017

**TO:**

Horry County Schools  
335 Four Mile Rd  
Conway, SC 29528

**FOR:**

St. James Intermediate School

DESCRIPTION			AMOUNT
Design work performed before the execution of the design build amendment			\$1,157,182.00
TOTAL			\$1,157,182.00

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

**Thank you for your business!**



Wire Instructions for Firstfloor Energy Positive LLC -[ HCS Team Acct.]

Bank Name: BB&T (Branch Banking & Trust Company)

Bank Address: 434 Fayetteville Street  
Raleigh, NC 27601

Phone #: (919) 716-9000

Transit Routing#: 053101121

Bank Account#: 0005205033949

Account Address: Firstfloor Energy Positive LLC  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104

Phone #: (336) 794-2325

Contact Name: Richard Green

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:00 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx; A312PerformanceBond-2010 - Working Draft - (3).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I'm going to attach the uncompleted forms of bonds to the Ex B for tonight.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
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**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,

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Robbie

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666

rgreen@firstfloor.biz

# AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal  
place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina» «Political Subdivision of the  
State of South Carolina»

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

« »

None

« »

See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »  
« »  
« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

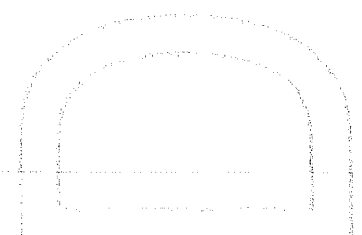
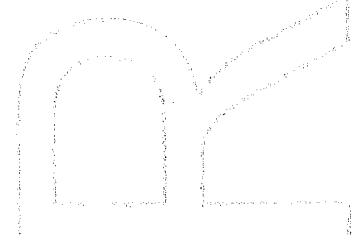
« »  
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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

Company:

(Corporate Seal)

**SURETY**

Company:

(Corporate Seal)

Signature:

Name and Title: « »« »

Address: « »

Signature:

Name and Title: « »« »

Address: « »

DRAFT

# AIA Document A312™ - 2010

## Performance Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

Horry County Schools District, a political subdivision of the State of South Carolina. « »

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

« »

None

«X»

See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »

« »

« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« »

« »

« »

« »

« »

« »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond ~~may~~ must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located ~~and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.~~

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1« Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract. »

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company:

*(Corporate Seal)*

**SURETY**

Company:

*(Corporate Seal)*

Signature:

Name and Title:

« »« »

Address:

« »

Signature:

Name and Title:

« »« »

Address:

« »

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:17 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Crap. I mean performance bond form.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:16 AM  
**To:** 'Robbie Ferris'  
**Subject:** RE: HCS - Revised Invoices

Hang on I need to get the current payment bond

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**

Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:16 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Hang on I need to get the current payment bond

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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---

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,  
These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

---

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Thursday, November 19, 2015 9:38 AM  
**To:** Keith R. Powell  
**Subject:** Re: Horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

I just realized that the contract says we have to pay our subcontractors all of their retainage as the work progresses but that we cannot bill for that retainage. That means we will have to front 3 1/2% of the contract which is millions of dollars. Is that really your intent, is there anyway we can get that relaxed

Sent from my iPhone

> On Nov 18, 2015, at 3:08 PM, Keith R. Powell <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)> wrote:

>

> I'll tell you after this call I'm about to start

>

> Keith R. Powell

> Childs & Halligan, P.A.

> Columbia, South Carolina

> [www.childs-halligan.com](http://www.childs-halligan.com)

> (803) 254-4035

>

>

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>

>> On Nov 18, 2015, at 3:06 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

>>

>> Keith,

>> How are you feeling about signing contracts on Thursday, is Friday

>> more realistic. I am trying to plan my day. I would hate to push it

>> out until Monday but I can also do it on Monday since I will be there

>> anyway for the board meeting at 4 o'clock

>>

>> Sent from my iPhone

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Friday, November 20, 2015 7:32 PM  
**To:** Keith R. Powell  
**Subject:** RF revisions to checked draft 11\_20\_2015  
**Attachments:** RF revisions to checked draft 11\_20\_2015.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

Attached are what I believe are the last few changes. Call me any time, day or night, to discuss if you like.

Please remember there are differences in the allowances, also don't forget the allowance for socastee ms site. Of 2.5 mil

Also we added language that says we get time extension for them not having a site.

---

**From:** Aaron Thomas [<mailto:athomas@metconus.com>]  
**Sent:** Friday, November 20, 2015 7:26 PM  
**To:** Robbie Ferris  
**Subject:** FW: RF revisions to checked draft 11\_20\_2015

Warm Regards,

**Aaron Thomas, MCM, LEED-AP | President**  
**Metcon, Inc.** | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372  
office 910.521.8013 | mobile 910.734.0537 | email:athomas@metconus.com  
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



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**From:** Aaron Thomas  
**Sent:** Friday, November 20, 2015 6:56 PM



**To:** Robert W. Ferris <[rferris@sfla.biz](mailto:rferris@sfla.biz)>

**Subject:** RF revisions to checked draft 11\_20\_2015

#### A141 – Suggested Changes

2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

The Design-Builder may invoice the Design-Builder may invoice the owner for \$1,118,043. for its design work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

#### **§ 8.2 Delays and Extensions of Time**

**§ 8.2.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or delay in purchase of any project property or owner provided surveying and testing of such property (in no case shall the duration of the project be less than the duration outlined in the design builders original proposal to the owner); or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ 8.2.3 Weather Delays:** When adverse weather conditions are the basis for a request for additional time, such request shall be documented by weather data from the National Oceanic and Atmospheric Administration (NOAA) for the locale of the project using a ten year average (2005-2014) of accumulated record mean values of climatological data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled; and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District with the application for payment for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

**§ 8.2.4 Anticipated Weather Delays:** A total of two (2) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the two (2) days anticipated are substantiated by written (NOAA) data indicating precipitation greater than .10" occurred that day and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time will be granted of allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each calendar day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. If the precipitation over .10" is so great that it causes subsequent days work to be lost those days may also be requested as a time extension and will be granted day for day basis for days lost in construction operations. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

Exhibit A – Suggested Changes

Under allowances- Don't forget that the value for some allowances differ on some schools. For example don't forget that Socastee Middle School has a site allowance that needs to be listed for \$2,500,000.00

Exhibit B – Suggested Changes

**B.3.2- ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1. & B.3.2

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Saturday, November 21, 2015 8:25 AM  
**To:** Keith R. Powell  
**Subject:** RE: HCS contracts forms

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

Our plan is that if they pick a bad CX we will hire our own CX because we need a quality commissioning job.. I think them not giving us approval authority is short sighted. I guess they don't see themselves as a part of a team, they see themselves as separate from the team. Odd!!

---

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Friday, November 20, 2015 12:43 PM  
**To:** Robbie Ferris  
**Subject:** RE: HCS contracts forms

Forgot to add – they did not want to do the consent to the CX. They felt it would fuel adverse press if FFEP got to “pick its own” owner agent. Obviously you will be free to complain about whoever they do get, if warranted.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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**From:** Keith R. Powell  
**Sent:** Friday, November 20, 2015 12:17 PM  
**To:** 'Robbie Ferris'  
**Subject:** RE: HCS contracts forms

Robbie – I've got a block of time from now to about 3:30 where I can't work on this. The A141 is attached with changes related to your points below. I am going to have to take this to the Board on Monday night for a motion, and will probably change the signatory from John Gardner to the board chair. Joe is aware of this.

I have put in the more generous time claims provisions that you think will get you the time you need, and I have updated the prototype language and increased the initial invoice per your chart. On SMS we will probably leave in the 5/1 date as with the others, but can put in a clause allowing time for delays in acquiring a site – same principle.

The insurance idea is worth considering but we don't have time to fully vet it, so I have added a note in Exhibit B that the insurance can be changed by agreement at any time.

I still need to fix 2.1.1 and to copy over the HCS's exhibits e and f, but wanted to get this to you before I get distracted for a few hours.

What do you think? I will run you a variance-checked version of everything a little later today when I think we have all settled.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
**Sent:** Thursday, November 19, 2015 4:24 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS contracts forms

Here is where I think we are, call me anytime to discuss if you have questions:

1. On the schedule I have talked with our subs and they can't accelerate the schedule with an increase in cost. I wish this answer were different so I guess we will have to go get the board to address the issue.
2. We consider the following a very big concession. We will grant HCS use of the drawings as you outlined in 12.3 but I prefer to strike "to the extent permitted by law" in the second to last line. My logic is that if they use my drawings and I am sued at the very least they should guarantee that they will pay my cost of defense and time associated with such defense. Also, in 12.3.1- in the first line change "shall" to "will endeavor to". I don't even know who all of the designers are at this point plus I can't guarantee that they will agree. I will work very hard to get this done.

In addition, in exchange for this right to use the drawings we would ask the following three things be added to the contract.

- a. We be paid for our up front work as previously discussed within 2 weeks of signing the contract.
- b. We be given the right to approve the owners selection of and scope for the commissioning agent. The owner will not hire the commissioning agent without our approval.
3. If the owner is interested we have found that we can buy a \$15,000,000 professional liability insurance policy with an 8 year tail that covers all known designers at the time we bind the policy. That policy will cost us about \$1,300,000.00 but if the owner is willing to limit our liability to the limits of our professional liability insurance we will spend the extra money on that policy. This would be a great benefit because the owner would have significantly more coverage (7 times) more than they would otherwise have. Plus it protects the owner over the 8 years. It costs us more money but I think it would protect us all.
4. Typos:
  - a. 2.1.1- the design builder is repeated
  - b. 9.8.3- review the .....i think you left the word work out?
  - c. Were fine with exhibit e and f that you sent over. We would ask that you consider the following. Under section 5.7 Key Personnel, Contractors and Suppliers: If the Owner has objection to personnel, Contractors, or suppliers and require that another personnel, Contractor, or supplier be used, they should pay for the difference in price.

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Thursday, November 19, 2015 12:30 PM  
**To:** Robbie Ferris

**Subject:** FW: HCS contracts forms  
**Importance:** High

Getting down to home stretch I hope:

1. The staff does not believe it has authority to extend beyond the May 1<sup>st</sup> date. It is clear to me that I'm not going to be able to do anything about that in the absence of a board action. However, FFEP has a monthly report directly to the Board, so certainly you will have many opportunities to explain the reasonableness and basis of the proposed durations to the Board and seek the necessary extensions – so much was made of this in the informal statements and press, though, that it may not be in anyone's interest to breach the May 1 date while so much public attention is focused on this. When the SMS site is pinned down, for example, might be a time to address it.
2. Mark has a simpler outline of the prototype issue. As far as I can tell this is the main clause to bear down upon today and tomorrow.
3. I can't make any progress on the proposal costs reimbursement.
4. I can't make any progress on the retainage issue.
5. Everyone is relieved there has been no protest.

I think we ought to plan to do this execution meeting on Monday. I would like to get all the terms settled by mid-day tomorrow and then be able to create and circulate the final sets of all 5 projects on Friday afternoon.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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**From:** Mark Wolfe [mailto:MWolfe002@horrycountyschools.net]

**Sent:** Thursday, November 19, 2015 11:35 AM

**To:** Keith R. Powell; John Gardner; Ara Heinz; Rick Maxey; Kenneth Generette; Daryl Brown; William F. Halligan

**Subject:** [REDACTED]

**ATTORNEY-CLIENT  
PRIVILEGE**

Mark A. Wolfe, RLA | Executive Director of Facilities  
Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526  
P: 843/488-6967  
Email: [mwolfe002@horrycountyschools.net](mailto:mwolfe002@horrycountyschools.net)  
Website: [www.horrycountyschools.net](http://www.horrycountyschools.net)



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## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Saturday, November 21, 2015 1:17 PM  
**To:** Keith R. Powell  
**Subject:** Fwd: RF revisions to checked draft 11\_20\_2015  
**Attachments:** image002.png; ATT00001.htm; RF revisions to checked draft 11\_21\_2015.docx; ATT00002.htm

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

**From:** Aaron Thomas <[athomas@metconus.com](mailto:athomas@metconus.com)>  
**Date:** November 21, 2015 at 1:15:16 PM EST  
**To:** "Robert W. Ferris" <[rferris@sfla.biz](mailto:rferris@sfla.biz)>  
**Subject:** FW: RF revisions to checked draft 11\_20\_2015

Robbie- I just read this again and realized we had made a mistake that could cause confusion. The attached revision made 2 minor changes to what we sent last night:

1. On weather delays I deleted the reference to the 10 year NOAA average being a baseline we would compare to. I did this because if we are already using 2 days per month as the baseline for adverse weather all we need NOAA for is to substantiate the days over 2 so it is not subjective in nature with the staff. Example If we have 5 days of rain in December 2015 that is over .10" then we would turn in the NOAA report for the project locale showing we had the 5 days over .10 and we would get an extension via change order for 3.  $<(5) \text{ days over } .10" - (2) \text{ days expected in contract} = (3) \text{ days extension}$
2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

**Aaron Thomas, MCM, LEED-AP | President**  
**Metcon, Inc.** | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372  
office 910.521.8013 | mobile 910.734.0537 | email:[athomas@metconus.com](mailto:athomas@metconus.com)  
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



## A141 – Suggested Changes

2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

The Design-Builder may invoice the ~~Design-Builder may invoice the owner~~ for \$1,118,043. for its design work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

### **§ 8.2 Delays and Extensions of Time**

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or delay in purchase of any project property or owner provided surveying and testing of such property (in no case shall the duration of the project be less than the duration outlined in the design builders original proposal to the owner); or by an act of god, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damages completed work, stored material, or impedes progress of the work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by weather data from the National Oceanic and Atmospheric Administration (NOAA) for the locale of the project. ~~substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District with the application for payment for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next Change Order.~~

§ 8.2.4 Anticipated Weather Delays: A total of two (2) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. ~~Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the two (2) days anticipated are substantiated by written (NOAA) data indicating precipitation greater than .10" occurred that day and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time will be granted of allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each calendar day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. If the precipitation over .10" is so great that it causes subsequent work days to be lost those days may also be requested as a time extension and will be granted day for day basis for days lost in construction operations. A request for adverse weather extension shall not be allowed after the date established for substantial completion.~~

Exhibit A – Suggested Changes

Under allowances- Don't forget that the value for some allowances differ on some schools. For example don't forget that Socastee Middle School has a site allowance that needs to be listed for \$2,500,000.00

Exhibit B – Suggested Changes

**B.3.2- ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1. & B.3.2

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Saturday, November 21, 2015 4:17 PM  
**To:** Keith R. Powell  
**Subject:** Hcs

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I will be at my office in about one hour and I will take a look at this and get back with you ASAP. You're one heck of a hard worker. I hope HCS appreciate all that you do for them

Sent from my iPhone

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Saturday, November 21, 2015 7:10 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas (athomas@metconus.com); Michael Richter  
**Subject:** RE: CORRECTED E: RF revisions to checked draft 11\_20\_2015

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

When you make these changes I need to send the final to the bonding company for their approval.

Here are my comments.

I just happened to find one item A.3.1.6 and A.3.1.7 that I thought were had agreed upon that was changed. If there are other substantial things that you changed please let me know where they are.

Main Document

- The weather delays and anticipated weather language I sent you this morning or something like that needs to be included. Most of our subs plan on working Saturday and or Sunday to get the work done. To not allow rain days if they fall on the weekend would be to defeat the purpose. Also we are told getting a rain day out of HCS with their current language takes a supreme court judge, seriously! We don't want to have to hire a scheduling expert and a lawyer every time it rains. The language needs to be simple, if it rains more than 2 days per month we get the extra days. As I see it we are saving HCS a lot of embarrassment by making this concession. They unnecessarily delayed the procurement process not us. I would rather not recount the delays because it would be unproductive at this point. We are taking risk here. What if we have a dry year? Regardless of the time extensions they should know we will do everything in our power to finish these jobs when they need them. We would not be able to withstand the political pressure of kids not have a school to attend even if we contractually had the time.

Exhibit A

- A.1.5.1.3-exhibit f that you sent us from HCS says if we submit application for payment by the 25<sup>th</sup> we get paid by the 15<sup>th</sup> of the following month. The last blank is (30) days according to exhibit F
- A.2.2 May 1<sup>st</sup> goes here I think
- A.3.1.6- We need something like this, again, we don't need to argue about if our proposal complies with the conceptual design or any other project requirement. They accepted our proposal. ----  
*The design builders proposal clarifies the design builders assumptions and clarifications.*
- A.3.1.7- *The design builders proposal has been determined by the owner to be an acceptable interpretation of the RFP and the project requirements.*

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Saturday, November 21, 2015 4:14 PM  
**To:** Robbie Ferris  
**Subject:** CORRECTED E: RF revisions to checked draft 11\_20\_2015  
**Importance:** High

Forget prior. Here they are. Remote computer not as simple as being there.

Keith R. Powell  
Childs & Halligan, P.A.

Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Keith R. Powell  
**Sent:** Saturday, November 21, 2015 4:13 PM  
**To:** 'Robbie Ferris'  
**Subject:** RE: RF revisions to checked draft 11\_20\_2015

How are these? Will make changes for MB and SMS issues.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**To:** Keith R. Powell  
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Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

**From:** Aaron Thomas <[athomas@metconus.com](mailto:athomas@metconus.com)>  
**Date:** November 21, 2015 at 1:15:16 PM EST  
**To:** "Robert W. Ferris" <[rferris@sfla.biz](mailto:rferris@sfla.biz)>  
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2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

**Aaron Thomas, MCM, LEED-AP** | President  
**Metcon, Inc.** | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372  
office 910.521.8013 | mobile 910.734.0537 | email: [athomas@metconus.com](mailto:athomas@metconus.com)  
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)

## Sheri L. Waincott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 12:29 PM  
**To:** Keith R. Powell  
**Subject:** Re: CORRECTED E: RF revisions to checked draft 11\_20\_2015

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Awesome !!!

I will be home in about 30 minutes and will take a look at it, thanks

Sent from my iPhone

On Nov 22, 2015, at 12:04 PM, Keith R. Powell <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)> wrote:

Sorry Robbie – I ran the “final” off the wrong base document, which is why you had fewer changes. Try this one. Getting to Ex A separately.

Keith R. Powell  
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I just happened to find one item A.3.1.6 and A.3.1.7 that I thought were had agreed upon that was changed. If there are other substantial things that you changed please let me know where they are.  
Main Document

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Exhibit A

- A.1.5.1.3-exhibit f that you sent us from HCS says if we submit application for payment by the 25<sup>th</sup> we get paid by the 15<sup>th</sup> of the following month. The last blank is (30) days according to exhibit F
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<a141 ffep - Final - (1).pdf>

## Sheri L. Wainscott

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**Categories:** Red Category

Keith

These look great...

I am presenting at 4:00, would you like to meet before that to sign contracts. We could meet at 2:30 or 3:00 if you like...

Robbie

---

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Sunday, November 22, 2015 12:17 PM  
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Exhibit A

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## Sheri L. Wainscott

---

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**To:** Keith R. Powell  
**Subject:** RE: CORRECTED E: RF revisions to checked draft 11\_20\_2015

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Sounds good, will you contact the board chair to meet us, he could meet us at 3:30, that will give me a few minutes to double check all the allowances and contract amounts...

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Sunday, November 22, 2015 1:30 PM  
**To:** Robbie Ferris  
**Subject:** Re: CORRECTED E: RF revisions to checked draft 11\_20\_2015

How about 3. I will need to make and print the 5 sets then drive to Conway

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## Sheri L. Waincott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 3:24 PM  
**To:** Keith R. Powell  
**Subject:** Horry County Schools-contracts

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

I am sorry but the bonding company just sent me these two items:  
They promised they have no other comments...

- In the AIA 312 **Performance Bond**, please remove section 16.2; and replace with:

"In no event shall the surety be liable under this bond for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this contract."

- In **Exhibit B**, and more specifically in in B.2.2, please insert the following as was modified in the RFP: (they did not like what you had)

"In no event shall the surety be liable under this bond for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this contract."



Robert W. Ferris, AIA, REFP, LEED AP  
CEO/President  
SfL+a Architects  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Cell: 919.610.2251  
Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

**Sheri L. Wainscott**

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 4:01 PM  
**To:** Keith R. Powell  
**Cc:** William F. Halligan  
**Subject:** RE: Horry County Schools-contracts

**Follow Up Flag:** Follow up  
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**Categories:** Red Category

I actually did not see this as different than what was already in exhibit B. I am not a lawyer or an insurance guy and am likely missing something. I have sent your comment to the bonding company, lets see what they say.

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Sunday, November 22, 2015 3:56 PM  
**To:** Robbie Ferris  
**Cc:** William F. Halligan  
**Subject:** Re: Horry County Schools-contracts

We will have to see about that with the district. This is a significant change from what was published in the RFP and committed to in your comments. We issued an addendum on this because others did express concern and HCS arrived at a compromise that the bond would only be excess to the professional liability policies. In a design-build the HCS has one entity counterparty for design and build and wants both performed with security.

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- In **Exhibit B**, and more specifically in in B.2.2, please insert the following as was modified in the RFP: (they did not like what you had)

"In no event shall the surety be liable under this bond for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this contract.

<image002.png>

Robert W. Ferris, AIA, REFP, LEED AP  
CEO/President  
SfL+a Architects  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Cell: 919.610.2251  
Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 4:02 PM  
**To:** Keith R. Powell  
**Subject:** RE: CORRECTED E: RF revisions to checked draft 11\_20\_2015

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Ok , if possible, lets still meet at 3 so I can double check all amounts...

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Sunday, November 22, 2015 3:49 PM  
**To:** Robbie Ferris  
**Subject:** Re: CORRECTED E: RF revisions to checked draft 11\_20\_2015

The board has to vote first at its meeting Monday night - he knows to not leave without signing

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 22, 2015, at 1:44 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

Sounds good, will you contact the board chair to meet us, he could meet us at 3:30, that will give me a few minutes to double check all the allowances and contract amounts...

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Sunday, November 22, 2015 1:30 PM  
**To:** Robbie Ferris  
**Subject:** Re: CORRECTED E: RF revisions to checked draft 11\_20\_2015

How about 3. I will need to make and print the 5 sets then drive to Conway

Keith R. Powell  
Childs & Halligan, P.A.  
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On Nov 22, 2015, at 1:28 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

These look great...

I am presenting at 4:00, would you like to meet before that to sign contracts. We could meet at 2:30 or 3:00 if you like...

Robbie

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Sunday, November 22, 2015 12:17 PM  
**To:** Robbie Ferris  
**Subject:** RE: CORRECTED E: RF revisions to checked draft 11\_20\_2015

Keith R. Powell  
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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Saturday, November 21, 2015 7:10 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas ([athomas@metconus.com](mailto:athomas@metconus.com)); Michael Richter  
**Subject:** RE: CORRECTED E: RF revisions to checked draft 11\_20\_2015

Keith,

When you make these changes I need to send the final to the bonding company for their approval.

Here are my comments.

I just happened to find one item A.3.1.6 and A.3.1.7 that I thought were had agreed upon that was changed. If there are other substantial things that you changed please let me know where they are.

Main Document

- The weather delays and anticipated weather language I sent you this morning or something like that needs to be included. Most of our subs plan on working Saturday and or Sunday to get the work done. To not allow rain days if they fall on the weekend would be to defeat the purpose. Also we are told getting a rain day out of HCS with their current language takes a supreme court judge,

seriously! We don't want to have to hire a scheduling expert and a lawyer every time it rains. The language needs to be simple, if it rains more than 2 days per month we get the extra days. As I see it we are saving HCS a lot of embarrassment by making this concession. They unnecessarily delayed the procurement process not us. I would rather not recount the delays because it would be unproductive at this point. We are taking risk here. What if we have a dry year? Regardless of the time extensions they should know we will do everything in our power to finish these jobs when they need them. We would not be able to withstand the political pressure of kids not have a school to attend even if we contractually had the time.

Exhibit A

- A.1.5.1.3-exhibit f that you sent us from HCS says if we submit application for payment by the 25<sup>th</sup> we get paid by the 15<sup>th</sup> of the following month. The last blank is (30) days according to exhibit F
- A.2.2 May 1<sup>st</sup> goes here I think
- A.3.1.6- We need something like this, again, we don't need to argue about if our proposal complies with the conceptual design or any other project requirement. They accepted our proposal. -----  
*The design builders proposal clarifies the design builders assumptions and clarifications.*
- A.3.1.7- *The design builders proposal has been determined by the owner to be an acceptable interpretation of the RFP and the project requirements.*

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Saturday, November 21, 2015 4:14 PM  
**To:** Robbie Ferris  
**Subject:** CORRECTED E: RF revisions to checked draft 11\_20\_2015  
**Importance:** High

Forget prior. Here they are. Remote computer not as simple as being there.

Keith R. Powell  
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**From:** Keith R. Powell  
**Sent:** Saturday, November 21, 2015 4:13 PM  
**To:** 'Robbie Ferris'  
**Subject:** RE: RF revisions to checked draft 11\_20\_2015

How are these? Will make changes for MB and SMS issues.

Keith R. Powell

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Saturday, November 21, 2015 1:17 PM  
**To:** Keith R. Powell  
**Subject:** Fwd: RF revisions to checked draft 11\_20\_2015

Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

**From:** Aaron Thomas <[athomas@metconus.com](mailto:athomas@metconus.com)>  
**Date:** November 21, 2015 at 1:15:16 PM EST  
**To:** "Robert W. Ferris" <[rferris@sfla.biz](mailto:rferris@sfla.biz)>  
**Subject:** FW: RF revisions to checked draft 11\_20\_2015

Robbie- I just read this again and realized we had made a mistake that could cause confusion. The attached revision made 2 minor changes to what we sent last night:

1. On weather delays I deleted the reference to the 10 year NOAA average being a baseline we would compare to. I did this because if we are already using 2 days per month as the baseline for adverse weather all we need NOAA for is to substantiate the days over 2 so it is not subjective in nature with the staff. Example If we have 5 days of rain in December 2015 that is over .10" then we would turn in the NOAA report for the project locale showing we had the 5 days over .10 and we would get an extension via change order for 3. <(5) days over .10" – (2) days expected in contract = (3) days extension>
2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President  
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke,  
NC 28372  
office 910.521.8013 | mobile 910.734.0537  
| email: [athomas@metconus.com](mailto:athomas@metconus.com)  
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 4:14 PM  
**To:** Keith R. Powell  
**Cc:** William F. Halligan  
**Subject:** RE: Horry County Schools-contracts

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I am arguing that point as I type this.

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Sunday, November 22, 2015 4:12 PM  
**To:** Robbie Ferris  
**Cc:** William F. Halligan  
**Subject:** Re: Horry County Schools-contracts

FYI It's not extra liability insurance- the bond is there to ensure that the surety will pay for somebody whose design will meet the SC standard of care if the DB fails to do so.

Keith R. Powell  
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On Nov 22, 2015, at 4:01 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

I actually did not see this as different than what was already in exhibit B. I am not a lawyer or an insurance guy and am likely missing something. I have sent your comment to the bonding company, lets see what they say.

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Sunday, November 22, 2015 3:56 PM  
**To:** Robbie Ferris  
**Cc:** William F. Halligan  
**Subject:** Re: Horry County Schools-contracts

We will have to see about that with the district. This is a significant change from what was published in the RFP and committed to in your comments. We issued an addendum on this because others did express concern and HCS arrived at a compromise that the bond would only be excess to the

professional liability policies. In a design-build the HCS has one entity counterparty for design and build and wants both performed with security.

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On Nov 22, 2015, at 3:24 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith,  
I am sorry but the bonding company just sent me these two items:  
They promised they have no other comments...

- In the AIA 312 **Performance Bond**, please remove section 16.2; and replace with:

"In no event shall the surety be liable under this bond for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this contract."

- In **Exhibit B**, and more specifically in in B.2.2, please insert the following as was modified in the RFP: (they did not like what you had)

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<image002.png>

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333 Fayetteville Street, Suite 225  
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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

## Sheri L. Waincott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 4:59 PM  
**To:** Keith R. Powell  
**Cc:** William F. Halligan  
**Subject:** RE: Horry County Schools-contracts

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

The bonding agent agrees that your language should suffice. He is trying to rally the lawyers. I think you want the same thing they want but they are stuck on their words. I don't quite get that.

I think this will get resolved no later than first thing in the morning....

The agent says he thinks he can help them thru the language. Your last two notes about your concerns were very, very helpful.

Robbie

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Sunday, November 22, 2015 4:17 PM  
**To:** Robbie Ferris  
**Cc:** William F. Halligan  
**Subject:** Re: Horry County Schools-contracts

And On the payment bond it is to ensure that designers get paid so the district does not have to worry about that. VWR have seen this as an issue with civil engineering services around post occupancy storm water systems covenants to DHEC, for example. SC law allows design professionals payment bond protection so I want the payment bond to mirror the statute and not have HCS drawn into a disputed engineer payment - legally or politically.

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<image002.png>

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[www.sfla.biz](http://www.sfla.biz)

"I'd put my money on solar energy... I hope we don't have to wait till oil  
and coal run out before we tackle that." Thomas Edison, in conversation  
with Henry Ford and Harvey Firestone, March 1931.

**Sheri L. Wainscott**

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 5:05 PM  
**To:** Keith R. Powell  
**Subject:** FW: Horry County to FFEP Contract and Allowance Values

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,  
Feel free to use this as a double check after you fill in the contract amounts and allowances.

**From:** Sam Isham [mailto:[sisham@metconus.com](mailto:sisham@metconus.com)]  
**Sent:** Sunday, November 22, 2015 4:40 PM  
**To:** Robbie Ferris  
**Cc:** Aaron Thomas; Michael Richter; Mike Mitchell; Ryan Parker  
**Subject:** Horry County to FFEP Contract and Allowance Values

### Horry County Schools Summary Report 11/22/2015

Carolina Forest Middle Myrtle Beach Middle St James Middle

Project Contract Value	\$ 45,930,227	\$ 46,485,102	\$
Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$
Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$
Owner Controls Allowance	\$ 650,000	\$ 650,000	\$
Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$
Owner Playground Equip. Allowance			\$
Owner Special Inspections Allowance	\$ 150,000	\$ 150,000	\$
Owner Commissioning Allowance	\$ 125,000	\$ 125,000	\$
Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$
Design Builder Landscaping Allowance	\$ 200,000	\$ 200,000	\$
Design Builder Complete Site Package Allowance			

Respectfully,  
Sam

**Sam Isham 32°, LEED AP** | Executive Vice President  
**Metcon, Inc.** | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372  
office [910.521.8013](tel:910.521.8013) | mobile [910.374.5620](tel:910.374.5620) | email: [sisham@metconus.com](mailto:sisham@metconus.com)  
website | [linkedin](#) | [twitter](#) | [instagram](#)

**metcon**  
BUILDINGS & INFRASTRUCTURE

PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

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# Horry County Schools Summary Report 11/22/2015

Carolina Forest Middle Myrtle Beach Middle St James Intermediate Socastee Middle Socastee Elementary

Project Contract Value	\$ 45,930,227	\$ 46,485,102	\$ 47,742,333	\$ 42,488,116	\$ 37,953,991
Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000
Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000
Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000
Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000
Owner Playground Equip. Allowance			\$ 150,000		\$ 350,000
Owner Special Inspections Allowance	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000
Owner Commisioing Allowance	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000
Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000
Design Builder Landscaping Allowance	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000
Design Builder Complete Site Package Allowance				\$ 2,500,000	



## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices  
**Attachments:** Invoice\_#1\_Carolina Forest\_2.docx; Invoice\_#1\_Mrytle Beach MS\_2.docx; Invoice\_#1\_Socastee ES\_2.docx; Invoice\_#1\_Socastee MS\_2.docx; Invoice\_#1\_St. James\_2.docx; Wire Instructions for FFEP LLC\_HCS\_Team\_11172015.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

### Richard A. Green

Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

INVOICE #1  
DATE: MARCH 21, 2017

**FOR:**  
Carolina Forest Middle School

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

PAPR - 001313

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

INVOICE #1  
DATE: MARCH 21, 2017

**FOR:**  
Myrtle Beach Middle School

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

PAPR - 001314

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

INVOICE #1  
DATE: MARCH 21, 2017

**TO:**  
Horry County Schools  
335 Four Mile Rd  
Conway, SC 29528

**FOR:**  
Socastee Elementary School

DESCRIPTION			AMOUNT
Design work performed before the execution of the design build amendment			\$1,055,481.00
TOTAL			\$1,055,481.00

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

**Thank you for your business!**

PAPR - 001315

**Firstfloor Energy Positive LLC**

4400 Silas Creek Parkway, Suite 200

Winston-Salem, NC 27104

Phone (336)794-2325 Fax (336)768-7666

**INVOICE**

INVOICE #1

DATE: MARCH 21, 2017

**TO:**

Horry County Schools

335 Four Mile Rd

Conway, SC 29528

**FOR:**

Socastee Middle School

DESCRIPTION			AMOUNT
Design work performed before the execution of the design build amendment			\$1,043,697.00
TOTAL			\$1,043,697.00

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

**Thank you for your business!**

**Firstfloor Energy Positive LLC**

4400 Silas Creek Parkway, Suite 200  
Winston-Salem, NC 27104  
Phone (336)794-2325 Fax (336)768-7666

**INVOICE**

INVOICE #1  
DATE: MARCH 21, 2017

**TO:**

Horry County Schools  
335 Four Mile Rd  
Conway, SC 29528

**FOR:**

St. James Intermediate School

DESCRIPTION			AMOUNT
Design work performed before the execution of the design build amendment			\$1,157,182.00
TOTAL			\$1,157,182.00

Please remit to Firstfloor Energy Positive, LLC. See attached wire instructions.

**Thank you for your business!**

**Wire Instructions for Firstfloor Energy Positive LLC -[ HCS Team Acct.]**

Bank Name: BB&T (Branch Banking & Trust Company)

Bank Address: 434 Fayetteville Street  
Raleigh, NC 27601

Phone #: (919) 716-9000

Transit Routing#: 053101121

Bank Account#: 0005205033949

Account Address: Firstfloor Energy Positive LLC  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104

Phone #: (336) 794-2325

Contact Name: Richard Green

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:19 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment)  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment) EM KRP to Davis, Heinz, Ferris, Wawrzyniak, Peeples, Gardner, Wolfe (payment bond - draft)  
RE: Payment Bond request - Horry County Schools Projects  
From: Keith R. Powell  
To: Danielle Davis; [ahainz@horrycountyschools.net](mailto:ahainz@horrycountyschools.net)



DRAFT

# AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE

LLC, «-»«-»

333 Fayetteville St., Suite 225

Raleigh, NC 27601

«-»

### SURETY:

(Name, legal status and principal place of business)

« »« »

« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina

«-»«-» Political Subdivision of the State of South Carolina-»

«335 Four Mile Rd., Conway, SC 29528

843.488.6700 »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District»[one for each]

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

«November 19, 2015 »

Amount: \$ « »

Modifications to this Bond:

« »

None

«-X»

See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »« »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »« »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »

« »

« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Executive Director of Facilities

«Horry County Schools

»

«-»

«-»

«-»

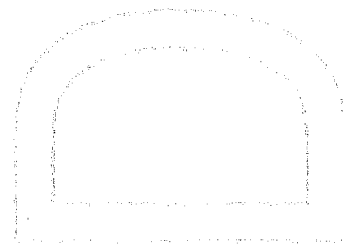
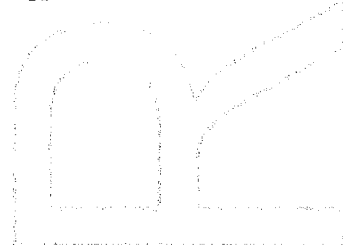
«-»

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

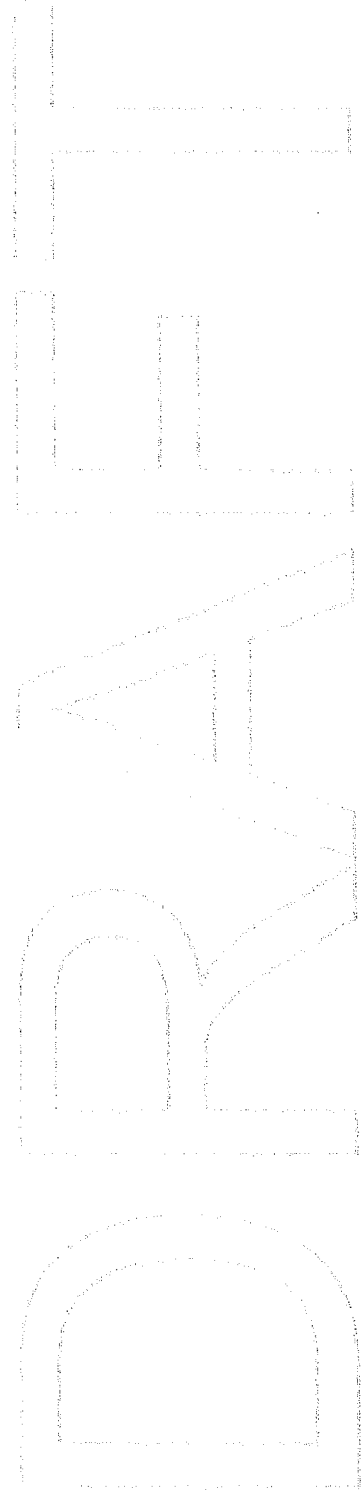
This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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« »



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- 1 the name of the Claimant;
- 2 the name of the person for whom the labor was done, or materials or equipment furnished;
- 3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- 4 a brief description of the labor, materials or equipment furnished;
- 5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- 6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- 7 the total amount of previous payments received by the Claimant; and
- 8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

«»As used in § 16.2, the phrase "to furnish labor, materials or equipment for use in the performance of the Construction Contract" includes the entire scope of the term "improve" as defined in S.C. Code § 26-6-10(2), which term "means and includes any design or other professional or skilled services furnished by architects, engineers, land surveyors, and landscape architects."

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

Company:

(Corporate Seal)

**SURETY**

Company:

(Corporate Seal)

Signature:

Name and Title: « »« »

Address: « »

Signature:

Name and Title: « »« »

Address: « »

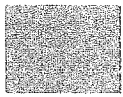
## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:18 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** 312 performance  
**Attachments:** 651979.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

**AIA<sup>®</sup>****Document A312™ – 2010****Performance Bond****CONTRACTOR:***(Name, legal status and address)***SURETY:***(Name, legal status and principal place of business)***OWNER:***(Name, legal status and address)*Horry County Schools, a political subdivision of the State of South Carolina.**CONSTRUCTION CONTRACT**

Date:

Amount: \$

Description:

*(Name and location)*Horry County Schools**BOND**

Date:

*(Not earlier than Construction Contract Date)*

Amount: \$

Modifications to this Bond:

☐

None

☒

See Section 16

**CONTRACTOR AS PRINCIPAL**Company: *(Corporate Seal)***SURETY**Company: *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and \_\_\_\_\_

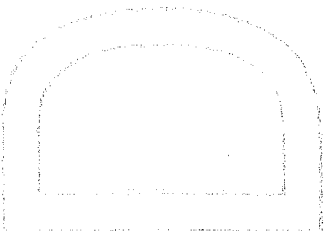
Title: \_\_\_\_\_

*(Any additional signatures appear on the last page of this Performance Bond.)**(FOR INFORMATION ONLY — Name, address and telephone)***AGENT or BROKER:****OWNER'S REPRESENTATIVE:***(Architect, Engineer or other party:)*

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond ~~may must~~ be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. located.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1 Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company:

*(Corporate Seal)*

**SURETY**

Company:

*(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

## Sheri L. Wainscott

---

**From:** Nancy Zabrud <NZabrud@sfla.biz>  
**Sent:** Tuesday, November 24, 2015 12:09 PM  
**To:** Keith R. Powell  
**Subject:** Executed Horry County Contracts A141, Exhibit A and Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Keith,

When you have a moment, could you please forward the executed copy of the entire contract with Exhibit A and B. This will allow me to continue with the A143 and C441 to ensure I have all the final language.

Thanks so much.



Nancy Zabrud, CPA CGMA MBA  
Controller  
Capital Bank Plaza  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Main: 919-573-6350  
Cell: 919-818-2879  
Fax: 919-573-6355  
[nzabrud@sfla.biz](mailto:nzabrud@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

**From:** Robbie Ferris  
**Sent:** Tuesday, November 17, 2015 9:56 AM  
**To:** Nancy Zabrud; Mike Wawrzyniak; Kenneth J. Peebles; Aaron Thomas; Mike Richter  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>,  
Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)"

<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>

Cc: "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>

Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell

Childs & Halligan, P.A.

Columbia, South Carolina

[www.childs-halligan.com](http://www.childs-halligan.com)

(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

## **Sheri L. Wainscott**

---

**From:** Clark, Brad <Brad.Clark@BBandT.com>  
**Sent:** Tuesday, November 24, 2015 2:03 PM  
**To:** Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)  
**Subject:** RE: HCS | Exhibit B - Builder's Risk Coverage  
**Attachments:** Builders Risk Considerations.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

I have received two quotes for Builder's Risk coverage from Zurich and AmRisc, and I should receive a third quote today from ACE. I will provide you with a spreadsheet comparing the three options and allow for HCS to compare the coverage to the coverage available through the IRF. I can also provide sample coverage forms.

A large factor in determining the cost of the Builder's Risk insurance is the # of months that coverage will be needed. **Do you know if HCS will want Builder's Risk coverage in force immediately or would like to wait until vertical construction/subsurface work to accommodate vertical construction begins?**

After review of the IRF coverage form, causes of loss form, and the flood and earthquake endorsements, I still have the same concerns as outlined in our original correspondence for protection of the Design-Builder.

- Damage to the project by a subcontractor would be covered by the IRF's Builder's Risk policy; however, the Builder's Risk insurer may look to 3<sup>rd</sup> party coverage to pay the claim which could lead to a delay on the project. We recommend providing the Design-Builder and subcontractors with a waiver of subrogation on the Builder's Risk policy as all covered claims will be First Party claims and should be settled much more swiftly.
- Materials at temporary storage facilities are not covered on the IRF policy.
- Materials must be within 100 feet of the described premises to be covered.
- Since the Design-Builder and subcontractors of all tier will not be Named Insured's on the IRF's policy, the word "you" and "your" as used in the policy only refer to HCS as a Named Insured.
  - Covered Property is defined in 1.b.(2) as "your building material and supplies used for construction". If HCS has not paid Firstfloor/their subcontractors for materials located at the site, it can be argued that those materials are considered Property of Others.
  - There is coverage limitation of \$2,500 of Property of Others
- Delay is not covered on the IRF policy. If a covered cause of loss on the Builder's Risk policy damages one or more schools, would HCS want insurance proceeds to pay for the extra expense to accommodate those students that were to occupy these schools?
- The endorsements that you provided indicate that coverage will extend for Flood and Quake.
- **Can you please confirm that the deductibles for Wind, Flood, and Quake will be \$1,000 as outlined in the coverage overview?**

Thank you,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services

4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 2:20 PM  
**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** RE: HCS | Exhibit B

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Clark, Brad [<mailto:Brad.Clark@BBandT.com>]  
**Sent:** Wednesday, November 18, 2015 2:17 PM  
**To:** Keith R. Powell; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** RE: HCS | Exhibit B

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

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Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 12:56 PM

**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** FW: HCS | Exhibit B  
**Importance:** High

Attached info for your use.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 12:40 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,  
*Ara*

Ara Heinz | Procurement Services | P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Tuesday, November 17, 2015 6:39 PM  
**To:** Ara Heinz  
**Subject:** Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

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**Date:** November 17, 2015 at 5:30:59 PM EST  
**To:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Subject:** RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

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Vice President  
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[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
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**To:** Robbie Ferris  
**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

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**Sent:** Tuesday, November 17, 2015 12:22 PM  
**To:** Keith R. Powell  
**Cc:** Clark, Brad ([Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com))  
**Subject:** FW: HCS | Exhibit B

Keith,  
Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!



**Feel free to call Brad directly to discuss his concerns.**  
**Robbie**

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

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Vice President  
BB&T Insurance Services  
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Durham, NC 27703  
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678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peebles, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peebles  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zablud <NZablud@sfla.biz>, Mike Wawrzyniak  
<mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>,  
Aaron Thomas <athomas@metconus.com>, Mike Richter  
<mrichter@taloving.com>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <kpowell@childs-halligan.net>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark  
Wolfe <MWolfe002@horrycountyschools.net>, "Ara Heinz  
(AHeinz@horrycountyschools.net)"  
<AHeinz@horrycountyschools.net>, John Gardner  
<JGardner@horrycountyschools.net>, Kenneth Generette  
<KGenerette@horrycountyschools.net>,  
"rmaxey@horrycountyschools.net"  
<rmaxey@horrycountyschools.net>  
**Cc:** "William F. Halligan" <bhalligan@childs-halligan.net>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on  
HCS comments on 141 and Ex A.

Keith R. Powell  
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Columbia, South Carolina  
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notify us by telephone as listed above immediately.

On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz>  
wrote:

Keith

Can you send the latest version of the contract for  
review

Robbie

Sent from my iPhone

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**Brad Clark**  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
Phone (919) 281-4545  
Fax (888) 746-8761  
Toll Free (800) 672-1674

**Builder's Risk Considerations / Questions for HCS**

1. B.3.2.6 indicates that the Owner will file a copy of the Builder's Risk policy. Will the Owner provide the Design-Builder with a specimen (sample) copy of the policy that will be used?
2. BB&T recommends that the Design-Builder and subcontractors of all tiers should be added as named insured on the Builder's Risk policy.
  - a. B.3.2.5 indicates that the owner will provide a waiver of subrogation in favor of the Design-Builder for adjacent property. If the owner will not add the Design-Builder as named insured, request should be made that the owner waive subrogation on the Builder's Risk policy in favor of the Design-Builder and subcontractors of all tiers.
    - i. Section B.3.2.7 has been struck which would normally provide the waiver on the Builder's Risk policy. BB&T recommends that this section be added back into the contract.
3. B.3.2.1.2 indicates owner shall pay costs not covered because of such deductibles. Will owner also pay costs not covered because of excluded perils, excluded property, or inadequate limits?
  - a. Areas of exposure that may not be covered on the SC policy include, but are not limited to: delay in completion, expediting expenses, testing, and construction forms and scaffolding.
4. Section 5.1.4.3 states that the Design-Builder will reimburse the owner for delay, improperly timed activities, and defective construction. A loss to the project caused by a subcontractor that is covered by the Builder's Risk policy may also delay the project. If the Builder's Risk policy obtained by the owner does not include Delay in Completion coverage, the uninsured costs from the delay may be the responsibility of the Design-Builder.
5. B.3.2.1.3 states that the Builder's Risk policy will provide coverage for portions of the work stored off the site and portions of the work in transit; however, the SC policyholder manual indicates that "covered property" includes machinery, equipment and supplies within 100 feet of the premises. BB&T recommends clarifying coverage for off-site property and property in transit.
6. BB&T recommends obtaining a full list of exclusions and a list of property not covered on the Builder's Risk policy obtained by Owner.

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Tuesday, November 24, 2015 4:49 PM  
**To:** Clark, Brad  
**Cc:** Keith R. Powell  
**Subject:** Re: HCS | Exhibit B - Builder's Risk Coverage  
**Attachments:** image001.png

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Brad

Would it make sense for you to meet with Hcs staff About insurance options next week Say wednsday

Sent from my iPhone

On Nov 24, 2015, at 2:03 PM, Clark, Brad <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)> wrote:

Keith,

I have received two quotes for Builder's Risk coverage from Zurich and AmRisc, and I should receive a third quote today from ACE. I will provide you with a spreadsheet comparing the three options and allow for HCS to compare the coverage to the coverage available through the IRF. I can also provide sample coverage forms.

A large factor in determining the cost of the Builder's Risk insurance is the # of months that coverage will be needed. **Do you know if HCS will want Builder's Risk coverage in force immediately or would like to wait until vertical construction/subsurface work to accommodate vertical construction begins?**

After review of the IRF coverage form, causes of loss form, and the flood and earthquake endorsements, I still have the same concerns as outlined in our original correspondence for protection of the Design-Builder.

- Damage to the project by a subcontractor would be covered by the IRF's Builder's Risk policy; however, the Builder's Risk insurer may look to 3<sup>rd</sup> party coverage to pay the claim which could lead to a delay on the project. We recommend providing the Design-Builder and subcontractors with a waiver of subrogation on the Builder's Risk policy as all covered claims will be First Party claims and should be settled much more swiftly.
- Materials at temporary storage facilities are not covered on the IRF policy.
- Materials must be within 100 feet of the described premises to be covered.
- Since the Design-Builder and subcontractors of all tier will not be Named Insured's on the IRF's policy, the word "you" and "your" as used in the policy only refer to HCS as a Named Insured.
  - Covered Property is defined in 1.b.(2) as "your building material and supplies used for construction". If HCS has not paid Firstfloor/their subcontractors for materials located at the site, it can be argued that those materials are considered Property of Others.
  - There is coverage limitation of \$2,500 of Property of Others

- Delay is not covered on the IRF policy. If a covered cause of loss on the Builder's Risk policy damages one or more schools, would HCS want insurance proceeds to pay for the extra expense to accommodate those students that were to occupy these schools?
- The endorsements that you provided indicate that coverage will extend for Flood and Quake.
- **Can you please confirm that the deductibles for Wind, Flood, and Quake will be \$1,000 as outlined in the coverage overview?**

Thank you,

Brad Clark, CIC  
Vice President  
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678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 2:20 PM  
**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** RE: HCS | Exhibit B

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 12:40 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,  
*Ara*

Ara Heinz | Procurement Services | ☎P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



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**To:** Ara Heinz  
**Subject:** Fwd: HCS | Exhibit B

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**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

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**Keith,**  
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**Feel free to call Brad directly to discuss his concerns.**  
**Robbie**

Robbie/Mike,

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678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peeples, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peeples  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zabrud <[NZabrud@sfla.biz](mailto:NZabrud@sfla.biz)>, Mike Wawrzyniak  
<[mwawrzyniak@sfla.biz](mailto:mwawrzyniak@sfla.biz)>, "Kenneth J. Peeples"  
<[kpeeples@bbandt.com](mailto:kpeeples@bbandt.com)>, Aaron Thomas  
<[athomas@metconus.com](mailto:athomas@metconus.com)>, Mike Richter  
<[mrichter@taloving.com](mailto:mrichter@taloving.com)>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

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<[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara  
Heinz (<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>)"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner  
<[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>, Kenneth  
Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>,  
"rmaxey@horrycountyschools.net"  
<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
**Cc:** "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
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<Builders Risk Considerations.pdf>

## Sheri L. Wainscott

---

**From:** Clark, Brad <Brad.Clark@BBandT.com>  
**Sent:** Tuesday, November 24, 2015 5:05 PM  
**To:** Robbie Ferris  
**Cc:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B - Builder's Risk Coverage

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Robbie,

I'm available Tuesday and Friday next week to meet with HCS staff to review insurance options.

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

---

**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
**Sent:** November 24, 2015 4:49 PM  
**To:** Clark, Brad  
**Cc:** Keith R. Powell  
**Subject:** Re: HCS | Exhibit B - Builder's Risk Coverage

Brad

Would it make sense for you to meet with Hcs staff About insurance options next week Say wednesday

Sent from my iPhone

On Nov 24, 2015, at 2:03 PM, Clark, Brad <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)> wrote:

Keith,

I have received two quotes for Builder's Risk coverage from Zurich and AmRisc, and I should receive a third quote today from ACE. I will provide you with a spreadsheet comparing the three options and allow for HCS to compare the coverage to the coverage available through the IRF. I can also provide sample coverage forms.

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**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 2:20 PM  
**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** RE: HCS | Exhibit B

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**From:** Clark, Brad [<mailto:Brad.Clark@BBandT.com>]  
**Sent:** Wednesday, November 18, 2015 2:17 PM  
**To:** Keith R. Powell; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** RE: HCS | Exhibit B

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I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

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**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 12:56 PM  
**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** FW: HCS | Exhibit B  
**Importance:** High

Attached info for your use.

Keith R. Powell  
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Columbia, South Carolina  
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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 12:40 PM

**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,  
Ara

Ara Heinz | Procurement Services | ☎P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Tuesday, November 17, 2015 6:39 PM  
**To:** Ara Heinz  
**Subject:** Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

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**From:** "Clark, Brad" <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)>  
**Date:** November 17, 2015 at 5:30:59 PM EST  
**To:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Subject:** RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

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**To:** Robbie Ferris  
**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

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**Subject:** FW: HCS | Exhibit B

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**Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!**  
**Feel free to call Brad directly to discuss his concerns.**  
Robbie

Robbie/Mike,

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- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.



- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

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678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peeples, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peeples  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zabrud <[NZabrud@sfla.biz](mailto:NZabrud@sfla.biz)>, Mike Wawrzyniak  
<[mwawrzyniak@sfla.biz](mailto:mwawrzyniak@sfla.biz)>, "Kenneth J. Peeples"  
<[kpeeples@bbandt.com](mailto:kpeeples@bbandt.com)>, Aaron Thomas  
<[athomas@metconus.com](mailto:athomas@metconus.com)>, Mike Richter  
<[mrichter@taloving.com](mailto:mrichter@taloving.com)>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe <[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))" <[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>, Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)" <[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
**Cc:** "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

*The information in this transmission may contain proprietary and non-public information of BB&T or its affiliates and may be subject to protection under the law. The message is intended for the sole use of the individual or entity to which it is addressed. If you are not the intended recipient, you are notified that any use, distribution or copying of the message is strictly prohibited. If you received this message in error, please delete the material from your system without reading the content and notify the sender immediately of the inadvertent transmission.*

<Builders Risk Considerations.pdf>

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Tuesday, November 24, 2015 5:12 PM  
**To:** Clark, Brad  
**Cc:** Robbie Ferris  
**Subject:** Re: HCS | Exhibit B - Builder's Risk Coverage  
**Attachments:** image001.png

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

That's probably best

Keith R. Powell  
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Columbia, South Carolina  
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Robbie,

I'm available Tuesday and Friday next week to meet with HCS staff to review insurance options.

Thanks,

Brad Clark, CIC  
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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 12:40 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

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Regards,  
*Ara*

Ara Heinz | Procurement Services | ☎P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)  
<image001.png>

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mailcode: 120-80-01-15

**From:** Peeples, Kenneth  
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**Subject:** Fwd: Hcs

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Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zablud <[NZablud@sfla.biz](mailto:NZablud@sfla.biz)>, Mike Wawrzyniak <[mwawrzyniak@sfla.biz](mailto:mwawrzyniak@sfla.biz)>, "Kenneth J. Peeples" <[kpeeples@bbandt.com](mailto:kpeeples@bbandt.com)>, Aaron Thomas <[athomas@metconus.com](mailto:athomas@metconus.com)>, Mike Richter <[mrichter@taloving.com](mailto:mrichter@taloving.com)>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell"  
<[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe <[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz" <[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>

<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>,  
John Gardner  
<[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>,  
>, Kenneth Generette  
<[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>,  
"rmaxey@horrycountyschools.net"  
<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
Cc: "William F. Halligan"  
<[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
**Subject: RE: Hcs**

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM,  
Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
wrote:

Keith

Can you send the  
latest version of the  
contract for review

Robbie

Sent from my iPhone

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**<Builders Risk Considerations.pdf>**

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 25, 2015 12:11 PM  
**To:** 'Nancy Zabloud'  
**Subject:** RE: Executed Horry County Contracts A141, Exhibit A and Exhibit B  
**Attachments:** SES Ex A - Final - (1).pdf; SES ex B - Final - (1).pdf; SMS ex B - Final - (1).pdf; SJIS ex B - Final - (1).pdf; MBM ex B - Final - (1).pdf; SJIS ex A - Final - (1).pdf; SMS ex A - Final - (1).pdf; MBM Ex A - Final - (1).pdf; SMS 141 - Final - (1).pdf; SJIS 141 - Final - (1).pdf; SES 141 - Final - (1).pdf; MBMS 141 - Final - (1).pdf; 673449 EX A - Final - (1).pdf; a141 ffep - Final - (1).pdf; EX B v2 - Final - (1)(1).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This should be all of it (3 per project). The only one possibly off is CFMS exhibits, because on my remote connection today I can't check them. All the rest I know are right, so you can rely on the same language for CFMS. These are as printed and checked by Sam & Robbie on Monday.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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---

**From:** Nancy Zabloud [<mailto:NZabloud@sfla.biz>]  
**Sent:** Tuesday, November 24, 2015 12:09 PM  
**To:** Keith R. Powell  
**Subject:** Executed Horry County Contracts A141, Exhibit A and Exhibit B

Hi Keith,

When you have a moment, could you please forward the executed copy of the entire contract with Exhibit A and B. This will allow me to continue with the A143 and C441 to ensure I have all the final language.

Thanks so much.



Nancy Zabloud, CPA CGMA MBA  
Controller  
Capital Bank Plaza

333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Main: 919-573-6350  
Cell: 919-818-2879  
Fax: 919-573-6355  
[nzablud@sfla.biz](mailto:nzablud@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

**From:** Robbie Ferris  
**Sent:** Tuesday, November 17, 2015 9:56 AM  
**To:** Nancy Zablud; Mike Wawrzyniak; Kenneth J. Peeples; Aaron Thomas; Mike Richter  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>,  
Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)"  
<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
**Cc:** "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith  
Can you send the latest version of the contract for review  
Robbie

Sent from my iPhone



**AIA®**

# Document A141™ – 2014 Exhibit A

## Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

New Socastee Elementary School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

**THE OWNER:**  
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29526

**THE DESIGN-BUILDER:**  
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

The Owner and Design-Builder hereby amend the Agreement as follows.

### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:  
(Check the appropriate box.)

☒ Stipulated Sum, in accordance with Section A.1.2  
(Paragraphs deleted)

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

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User Notes:

(728068658)



below

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum shall be thirty-seven million nine hundred fifty-three thousand nine hundred ninety-one dollars (\$ 37,953,991.00), subject to authorized adjustments as provided in the Design-Build Documents.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**§ A.1.5 Payments**

**§ A.1.5.1 Progress Payments**

**§ A.1.5.1.1** Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

**§ A.1.5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ A.1.5.1.3** An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

*(Paragraph deleted)*

**§ A.1.5.1.5** With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

**§ A.1.5.1.6** In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ A.1.5.1.7** Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

Init.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent ( 3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

(Paragraphs deleted)

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

(Paragraph deleted)

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

May 1, 2017.

(Table deleted)

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Liquidated damages per A141-2014.

Init.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraph deleted)*

§ A.3.1.5 Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

**.1 Allowances**

Owner Furniture Allowance	\$ 1,000,000
Owner Hardware Allowance	\$ 250,000
Owner Controls Allowance	\$ 500,000
Owner Fire Alarm Allowance	\$ 600,000
Owner Playground Equipment Allowance	\$350,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 00,000
Owner Technology Allowance	\$ 1,275,000
Owner Landscaping Allowance	\$200,000

**.2 Contingencies**

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015. The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

*(Paragraphs deleted)*

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

Socastee ES:

Superintendent: Dale McCoy

*(Paragraph deleted)*

Project Manager: Mike Dickman

*(Paragraphs deleted)*

Assistant Superintendent: David Isham

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

SFL+a Architects: Architect, Raleigh NC

Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Init.

## ARTICLE A.5 COST OF THE WORK

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

### § A.5.4 Other Agreements

*(Paragraph deleted)*

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

### § A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### § A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER *(Signature)*

Joe Defeo, Chairman of the Board of Education  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
DESIGN-BUILDER *(Signature)*

Robert Ferris, Authorized Member  
\_\_\_\_\_  
*(Printed name and title)*

Init.

## Additions and Deletions Report for AIA<sup>®</sup> Document A141<sup>™</sup> – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:51:25 on 11/23/2015.

### PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141<sup>™</sup>–2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")

...

New Socastee Elementary School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29526

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

[ X ] Stipulated Sum, in accordance with Section A.1.2 below

[ ~~—~~ ] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[ ~~—~~ ] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

### PAGE 2

§ A.1.2.1 The Stipulated Sum shall be (\$ ~~—~~ ), thirty-seven million nine hundred fifty-three thousand nine hundred ninety-one dollars (\$ 37,953,991.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ ~~A.1.2.2~~ The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.2.3 Unit prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
<del>§ A.1.3 Cost of the Work Plus Design-Builder's Fee</del>		
<del>§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.</del>		
<del>§ A.1.3.2 The Design-Builder's Fee:</del>		
<del>(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)</del>		

~~§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price~~

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

~~§ A.1.4.3 Guaranteed Maximum Price~~

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed — (\$ —), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.~~

~~(Insert specific provisions if the Design-Builder is to participate in any savings.)~~

~~§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.~~

~~(Provide information below or reference an attachment.)~~

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.4.3.4 Unit Prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
<del>§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:</del>		

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~~User Notes:~~

(728068658)

...

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the — day of the month, the Owner shall make payment of the certified amount to the Design Builder not later than the — day of the — month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than — ( — ) days after the Owner receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)* An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

~~§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design Builder, less (2) that portion of those payments attributable to the Design Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

~~§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builders' Applications for Payment.~~

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- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent ( 3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 %);

...

~~§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)~~

~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~.2 Add the Design-Builder's Fee, less retainage of — percent ( — %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract retainage of — percent ( — %) from that portion of the Work that the Design-Builder self performs;~~
- ~~.4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with these terms.~~

~~§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price~~

~~§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~



Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

- ~~2~~ Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- ~~3~~ Add the Design-Builder's Fee, less retainage of ~~—~~ percent (~~—~~ %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~4~~ Subtract retainage of ~~—~~ percent (~~—~~ %) from that portion of the Work that the Design-Builder self-performs;
- ~~5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~6~~ Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~7~~ Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

~~§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with these terms.~~

~~§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, requirements which extend beyond final payment.~~

~~§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.~~

...

~~§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than ~~—~~ ( ~~—~~ ) days from the date of this Amendment, or as follows:~~

~~(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)~~

May 1, 2017.

Portion of Work

Substantial Completion Date

...

Liquidated damages per A141-2014.

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§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following: Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.;

~~§ A.3.1.1 The Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
----------	-------	------	-------

~~§ A.3.1.2 The Specifications:~~

~~(Either list the specifications here or refer to an exhibit attached to this Amendment.)~~

Section	Title	Date	Pages
---------	-------	------	-------

~~§ A.3.1.3 The Drawings:~~

~~(Either list the drawings here or refer to an exhibit attached to this Amendment.)~~

Number	Title	Date
--------	-------	------

~~§ A.3.1.4 The Sustainability Plan, if any:~~

~~(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)~~

Title	Date	Pages
-------	------	-------

Other identifying information:

...

Owner Furniture Allowance	\$ 1,000,000
Owner Hardware Allowance	\$ 250,000
Owner Controls Allowance	\$ 500,000
Owner Fire Alarm Allowance	\$ 600,000
Owner Playground Equipment Allowance	\$ 350,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 00,000
Owner Technology Allowance	\$ 1,275,000
Owner Landscaping Allowance	\$ 200,000

...

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

...

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015. The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

~~§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:~~

~~§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:~~

...

~~.1— Superintendent Socastee ES:~~  
~~Superintendent: Dale McCoy~~

~~.2— Project Manager~~~~Project Manager: Mike Dickman~~

~~.3— Others~~

~~Assistant Superintendent: David Isham~~

...

~~Sfl+a Architects: Architect, Raleigh NC~~  
~~Metcon/TA Loring joint venture: General Contractor, Pembroke NC~~

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### ~~§ A.5.1 Cost To Be Reimbursed as Part of the Contract~~

#### ~~§ A.5.1.1 Labor Costs~~

~~§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops:~~

~~§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site:~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

~~§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.~~

~~§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.~~

~~§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.~~

~~§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction~~

~~§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.~~

~~§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

~~§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items~~

~~§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.~~

~~§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~

~~§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.~~

~~§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.~~

~~§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.~~

~~§ A.5.1.5 Miscellaneous Costs~~

~~§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.~~

~~§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.~~

~~§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.~~

~~§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.~~

~~§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.~~

~~§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.~~

~~§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.~~

~~§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.~~

~~§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.~~

~~§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

#### ~~§ A.5.1.6 Other Costs and Emergencies~~

~~§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.~~

~~§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.~~

~~§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.~~

#### ~~§ A.5.1.7 Related Party Transactions~~

~~§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.~~

~~§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall~~

be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

~~§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract~~

The Cost of the Work shall not include the items listed below:

- ~~.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;~~
- ~~.2 Expenses of the Design-Builder's principal office and offices other than the site office;~~
- ~~.3 Overhead and general expenses, except as may be expressly included in Section A.5.1;~~
- ~~.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;~~
- ~~.5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
- ~~.6 Any cost not specifically and expressly described in Section A.5.1; and~~
- ~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.~~

~~§ A.5.3 Discounts, Rebates, and Refunds~~

~~§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.~~

~~§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

~~§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

~~§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below: Documents.~~

...

Joe Defeo, Chairman of the Board of Education

Robert Ferris, Authorized Member

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:51:25 on 11/23/2015 under Order No. 0239586208\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)



**AIA<sup>®</sup>**

# Document A141™ – 2014 Exhibit B

## Insurance and Bonds

for the following PROJECT:

*(Name and location or address)*

New Socastee Elementary School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

THE OWNER:

*(Name, legal status and address)*

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

THE DESIGN-BUILDER:

*(Name, legal status and address)*

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).  
*(In words, indicate day, month and year.)*

### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

### ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes: (911158130)

1



§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the  
(Paragraphs deleted)  
Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 **Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

Init.

The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### § B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

#### ARTICLE B.3 OWNER'S INSURANCE

##### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

##### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

*(Paragraph deleted)*

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

*(Paragraph deleted)*

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

*(Paragraphs deleted)*

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

*(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

*(Paragraphs deleted)*

Init.

## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:13:51 on 11/23/2015.

### PAGE 1

New Socastee Elementary School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, ~~unless a different duration is stated below:~~  
~~(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)~~

#### Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

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User Notes:

(911158130)

PAPR - 001387

...

- .3 damages because of injury to or destruction of tangible ~~property; property, and must contain the~~  
subcontractor exception to the "your work" exclusion;

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ ) per claim and (\$ ) in the aggregate.~~

§ B.2.1.9 **Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability and Pollution and Automobile Liability.~~ The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability, and Pollution and Automobile Liability.~~ Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The  
performance bond, may, but is not required to secure the  
professional liability of design professionals to the extent  
such liability is covered by the design professional's 100% of contract value.

professional liability insurance.

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

~~§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.~~

~~§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

~~§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.~~

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

~~consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.~~

~~§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

PAGE 4

~~§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

#### ~~ARTICLE B.4 — SPECIAL TERMS AND CONDITIONS~~

~~Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:~~

**AIA<sup>®</sup>****Document A141<sup>™</sup> – 2014 Exhibit B****Insurance and Bonds**

for the following PROJECT:

*(Name and location or address)*

New Socastee Middle School  
 (per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in  
 response to the solicitation.)

**THE OWNER:***(Name, legal status and address)*

Horry County Schools, South Carolina, a political subdivision of the State of South  
 Carolina.  
 335 Four Mile Rd.  
 Conway, SC 29528

**THE DESIGN-BUILDER:***(Name, legal status and address)*

FIRSTFLOOR ENERGY POSITIVE LLC,  
 333 Fayetteville St., Suite 225  
 Raleigh, NC 27601

**THE AGREEMENT**

This Insurance Exhibit is part of the accompanying agreement for the Project, between  
 the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third  
 day of November in the year two thousand fifteen (2015).  
*(In words, indicate day, month and year.)*

**TABLE OF ARTICLES**

- B.1 GENERAL**
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS**
- B.3 OWNER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

**ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds  
 as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision  
 in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit  
 will prevail. During the course of the Project, the Owner and Design-Builder may  
 substitute mutually-acceptable alternative insurance arrangements for those specified in §  
 B.2.1 and/or B.3.2..

**ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS****ADDITIONS AND DELETIONS:**

The author of this document has  
 added information needed for its  
 completion. The author may also  
 have revised the text of the original  
 AIA standard form. An *Additions and  
 Deletions Report* that notes added  
 information as well as revisions to  
 the standard form text is available  
 from the author and should be  
 reviewed. A vertical line in the left  
 margin of this document indicates  
 where the author has added  
 necessary information and where  
 the author has added to or deleted  
 from the original AIA text.

This document has important legal  
 consequences. Consultation with an  
 attorney is encouraged with respect  
 to its completion or modification.

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1



§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the *(Paragraphs deleted)* Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

*(Paragraphs deleted)*

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

Init.

The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### **§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

**§ B.2.2.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **ARTICLE B.3 OWNER'S INSURANCE**

#### **§ B.3.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### **§ B.3.2 Property Insurance**

**§ B.3.2.1** Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

*(Paragraph deleted)*

**§ B.3.2.1.2** If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

*(Paragraph deleted)*

**§ B.3.2.1.4** Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ B.3.2.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

*(Paragraphs deleted)*

**§ B.3.2.6** Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

| *(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

| *(Paragraphs deleted)*

Init.

## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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### PAGE 1

New Socastee Middle School

(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,  
335 Four Mile Rd.  
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, ~~unless a different duration is stated below:~~

~~(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)~~

#### Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

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...

- .3 damages because of injury to or destruction of tangible ~~property~~; property, and must contain the subcontractor exception to the "your work" exclusion;

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ ) per claim and (\$ ) in the aggregate.~~

§ B.2.1.9 **Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability and Pollution and Automobile Liability~~. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability, and Pollution and Automobile Liability~~. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's 100% of contract value.

professional liability insurance.

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

~~§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

#### ~~ARTICLE B.4 SPECIAL TERMS AND CONDITIONS~~

~~Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:~~

**AIA®****Document A141™ – 2014 Exhibit B****Insurance and Bonds****for the following PROJECT:***(Name and location or address)*

New St. James Intermediate School  
 (per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in  
 response to the solicitation.)

**THE OWNER:***(Name, legal status and address)*

Horry County Schools, South Carolina, a political subdivision of the State of South  
 Carolina.  
 335 Four Mile Rd.  
 Conway, SC 29528

**THE DESIGN-BUILDER:***(Name, legal status and address)*

FIRSTFLOOR ENERGY POSITIVE LLC,  
 333 Fayetteville St., Suite 225  
 Raleigh, NC 27601

**THE AGREEMENT**

This Insurance Exhibit is part of the accompanying agreement for the Project, between  
 the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third  
 day of November in the year two thousand fifteen (2015).

*(In words, indicate day, month and year.)***TABLE OF ARTICLES**

- B.1 GENERAL**
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS**
- B.3 OWNER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

**ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds  
 as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision  
 in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit  
 will prevail. During the course of the Project, the Owner and Design-Builder may  
 substitute mutually-acceptable alternative insurance arrangements for those specified in §  
 B.2.1 and/or B.3.2..

**ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS****ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the  
(Paragraphs deleted)  
Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

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The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### § B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### ARTICLE B.3 OWNER'S INSURANCE

#### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

*(Paragraph deleted)*

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

*(Paragraph deleted)*

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

*(Paragraphs deleted)*

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

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cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

| *(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

| *(Paragraphs deleted)*

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